HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Case No. 794 of 2006

Shiv Kumar @ Shiv Narayan Sharma s/o Late Sri Hetu Ram Sharma r/o Mohalla Laton Wali Gali Kankhal, District Haridwar.

.....Petitioners

Versus

1. State of Uttaranchal
2. Smt. Nisha Sharma w/o Sri Shiv Kumar , B- 621 IDPL, Veerbhadra, Rishikesh, District Dehradun

.....Respondents

Dated 21.12.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Pankaj Miglani counsel for the petitioners, learned A.G.A. for respondents.

By the present application under section 482 Cr.P.C., the applicants have prayed for quashing the proceedings in Criminal Case No. 424 of 2006, Smt. Nisha Vs. Shiv Kumar and others under sections 498-A 323 and 506 I.P.C. pending in the court of Special Judicial Magistrate, Dehradun.

Briefly stated respondent no. 2 Smt. Nisha has lodged a complaint under section 498-A, 323 and 506 I.P.C. against the applicant in P.S. Rishikesh. The respondent no. 2 has alleged that she was married to applicant according to the Hindu rites at on 5.3.2002. It has been alleged by the complainant that soon after the marriage applicant along with other members of his family started ill-treating the complainant and demanded dowry. The Police investigated the case and submitted final

report to the Judicial Magistrate, Rishikesh. The Special Judicial Magistrate issued notice to the complainant, who filed objection against the final report. On the basis of the statement of the complainant under section 200 Cr.P.C. and her witnesses under section 202 Cr.P.C. the Magistrate took cognizance against the accused applicant and issued summons to him.

Since the applicants are being prosecuted for the offence punishable under sections 498-A, 323 and 506 I.P.C. it will be open for the petitioner to defend his case before the Court concerned. Since the disputed questions of fact with regard to the offence punishable under sections 498A, 323 & 506 I.P.C. are involved, therefore, prima facie no case is made out for interference under Section 482 Cr.P.C.

After relying upon the judgment in ***State of Haryana and others v. Ch. Bhajan Lal and others in AIR 1992 SC 604, in Union of India Vs. Prakash P. Hinduja and another 2003 SCC (Cri) 1314,*** the Apex Court has held as under:

> ""*9. ...The grounds on which the prosecution initiated against an accused can also be quashed by the High Court in exercise of power conferred by Section 482 CrPC has been settled by a catena of decisions of this Court rendered in R.P. Kapur v. State of Punjab AIR 1960 SC 866, Madhu Limaye v. State of Maharashtra (1977) 4 SCC 551, Municipal Corpn. Of Delhi v. Ram Kishan Rohtagi (1983) 1 SCC 1 and Raj Kapoor v. State (1980) 1 SCC 43. The matter was examined in considerable detail in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 and after review of practically all the earlier decisions, the Court in para 108 of the Report laid down the grounds on which power under Section 482 CrPC can be exercised to quash the criminal proceedings and basically they are: (1) where the allegations made in the FIR or complainant, even if*

they are taken at their face value and accepted in their entirely do not prima facie constitute any ofence or make out a case against the accused, (2) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused, (3) where there is an express legal bar engrafted in any of the provisions of the Code of Criminal Procedure or the Act concerned to the institution and continuance of the proceedings. But this power has to be exercised in a rare case and with great circumspection.

10. The principal question which, therefore, requires consideration is whether the court can go into the validity or otherwise of the investigation done by the authorities charged with the duty of investigation under the relevant statutes and whether any error or illegality committed during the course of investigation would so vitiate the charge-sheet so as to render the cognizance taken thereon bad and invalid."

So far as the instant petition under section 482 Cr.P.C. is concerned no interference can be made under section 482 Cr.P.C. as both the parties will be at liberty to lead the evidence in view of the observations made by the Apex Court in the case Medchl Chemicals and Pharma (P) Ltd. vs. Biological E. Ltd. and others (2003) 3 SCC 269.

Since the trial has to take place for the offences under aforesaid sections, therefore, without expressing any opinion on the merits of the case, I direct the applicant to appear before the concerned Presiding Officer. The Court shall consider his bail application on the same day.

Subject to the observations made above, application under Section 482 Cr.P.C. is disposed of.

(Rajesh Tandon, J.)

Dated : 21.12.2006
*Dhyani